

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 12549 of 2007(R)

PETITIONER:

**V.MURALEEDHARAN, S/O.P.K.VASUDEVAN,
SARAVANA BHAVAN, AYATHIL, KOLLAM,
KOLLAM DISTRICT.**

**BY ADV. SRI.R.PARAMESWARAN NAIR
SRI.C.UNNIKRISHNAN (KOLLAM)**

RESPONDENTS:

- 1. N.MUTHULEKSHMI, SREE UMAMAHESWARA
BHAVAN, MUNDAKKAL WEST, KOLLAM.**
- 2. SWAMINATHAN, SREE UMAMAHESWARA
BHAVAN, MUNDAKKAL WEST, KOLLAM.**
- 3. SREENIVASAN, SREE UMAMAHESWARA BHAVAN,
MUNDAKKAL WEST, KOLLAM.**
- 4. SREEKANTH,
SREE UMAMAHESWARA BHAVAN,
MUNDAKKAL WEST, KOLLAM.**

BY ADV. SRI.R.SATISH KUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 12549/2007 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT IN O.S. NO. 652/2002 OF MUNSIF COURT, KOLLAM DT. 22/10/02.

EXT.P2. COPY OF THE AFFIDAVIT AND PETITION IN IA NO. 870/2004 BEFORE MUNSIF COURT, KOLLAM DT. 4/3/04.

EXT.P3. COPY OF THE AFFIDAVIT AND PETITION IN IA NO. 2697/04 BEFORE MUNSIF COURT, KOLLAM DT.22/7/04.

EXT.P4. COPY OF THE ORDER IN IA NO. 870/2004 OF MUNSIF COURT, KOLLAM DT. 26/09/05.

EXT.P5. COPY OF THE JUDGMENT IN CMA NO. 83/05 BEFORE DIST. COURT, KOLLAM DT. 8/6/06.

RESPONDENT'S EXHIBITS

NIL.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.12549 OF 2007

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Dated this the 27th day of September 2007

JUDGMENT

This writ petition is filed challenging the judgment of the learned District Judge, Kollam in C.M.A.No.83 of 2005. The said C.M.A. was preferred against the order of the Addl.Munsiff's Court, Kollam in I.A.No.870/2004 in O.S.No.652/2002. The application was one to set aside the ex parte decree on the ground that the petitioner had not been served with summons and further he was laid up with jaundice, which disabled him to appear before court. He got himself examined and had also examined the Doctor, PW2. In the C.M. A there was some delay and the court dismissed the CMA on the ground that delay has not properly explained. It also held that there is absolutely no bona fides in the claim made by the appellant. There is no dispute that there was any personal service of notice on the defendant and it was only by affixture. It is true that though he received notice of execution in January, 2004, he filed C.M.A. only in the month of March. The reason given is that he was suffering from jaundice and was under the treatment of PW2, the Doctor. The appellate

court did not find very much in favour of him because the Doctor failed to produce documents to show that he had treated him. It is a settled position that broad principles of natural justice always demand that an opportunity should be given to the party unless he is grossly negligent or he is guilty of grave misconduct. In the decision reported in 1968 KLT 599 this court had held that if the application is filed in time and some evidence is given and proceeded in the right direction, then the court shall grant an opportunity to the party to conduct the case on merits. Here is a case where the suit is one with respect to a mandatory injunction and the party had approached the court, though not with great diligence but with reasonable diligence. He had also tendered some evidence in support of his contention..

Therefore I feel principles of natural justice require that an opportunity should be given and for the laches on his part he must be directed to compensate the other side by paying cost. Therefore the judgment in C.M.A.No.83 of 2005 and the order in I.A.No.870/2004 in O.S.No.652/2002 are set aside on condition that the petitioner pays a cost of Rs.1,500/- to the respondents. If the amount is paid or deposited before the court below within a period of one month from today, the court below shall set aside the ex parte decree, restore the suit to file and permit the defendant to proceed with the matter in accordance with law. Parties are

WP(C) 12549/2007

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directed to appear before the court below on 27.10.2007. In case of default of payment of the stipulated amount, the writ petition shall stand dismissed.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-